UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MICHAEL PERODEAU, Plaintiff, v. CITY OF HARTFORD, JOSEPH CROUGHWELL, ROBERT CASATI, JAMES BLANCHETTE, AND PAUL CHERNIAK, Defendants.	:	CIVIL NO. 3:99cv807 (AHN)

RULING ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

This case involves claims for equal protection and Title VII retaliation brought by Plaintiff Michael Perodeau ("Perodeau"), a long-time veteran of the Hartford Police Department, against the City of Hartford ("Hartford"), Chief Joseph Croughwell ("Croughwell"), Deputy Chief Robert Casati ("Casati"), Lieutenant James Blanchette ("Blanchette"), and Sergeant Paul Cherniak ("Cherniak") (collectively, "Defendants"). Pending before the court is Defendants' Motion for Summary Judgment on all of Perodeau's claims [Doc. #84]. For the following reasons, the motion is GRANTED.

FACTS

Based on its review of the summary judgment record, the court finds that the following material facts are not in dispute:

In 1979, Hartford hired Perodeau as a police officer. Between 1992-1998, Perodeau worked in the Evidentiary Services Division ("ESD"). At ESD, he was one of two detectives in the Crime Scene Unit ("CSU") who specialized in reconstructing crime scenes, often those involving serious automobile accidents. Detective Cruz ("Cruz") was the other accident reconstructionist in CSU. Since crimes and accidents would frequently occur after business hours, CSU detectives, including Perodeau and Cruz, were often "called back" in the evening to examine accident sites, work up crime scenes, and preserve evidence. Given their specialized training, Perodeau and Cruz were the preferred detectives to be called back for serious automobile accidents.

As a single father of two children, one eleven and the other fourteen, Perodeau made himself unavailable for after-hours call-back duty. Until June 1997, Perodeau was able to make informal arrangements with other ESD officers such as Cruz to "swap" call-backs in order to avoid working during evening hours.

In June 1997, Cherniak became supervisor of ESD and revised its call-back procedures. The catalyst for this change was the loss of important evidence after a serious crime occurred on the evening of June 15, 1997, when no one from ESD responded to the call-back. As a result, Cherniak required all ESD detectives to take call-backs and to make a written record of the detectives who reported for call-back duty.

Perodeau, however, persisted in avoiding call-back duty because of his family responsibilities. Between June 15, 1997, and November 10, 1997, Perodeau responded to fourteen call-backs, but failed to respond to ten others, four of which involved fatal automobile accidents. During this same period, other CSU members responded to an average of twenty-four call-backs apiece, and complained to Cherniak that they were taking a disproportionate number of call-backs.

At a meeting on October 9, 1997, Cherniak reminded Perodeau that CSU detectives were required to be available for call-back duty. Perodeau responded that he could not guarantee his availability because of his responsibilities as a single parent. Although some detectives would decline call-backs on particular evenings, Perodeau was the sole CSU detective who refused call-backs as a matter of general

practice. In fact, Perodeau even refused several call-backs when Cruz, the only other accident reconstructionst, was out on medical leave.

On November 14, 1997, Cherniak and Casati met with Perodeau and expressed concern over his unwillingness to respond to call-backs. At this meeting, Perodeau did not present any proposals for remaining at CSU, but merely requested that he be transferred to the Fraud Division. On or about January 6, 1998, based on Cherniak's recommendation, Croughwell transferred Perodeau to a position in the North Police Services Area ("North PSA") that did not require call-back duty. Although Perodeau's salary and benefits remained the same, he found this transfer to be unsatisfactory. In his view, this new position required him to do less prestigious work that underutilized his skills and training. He alleges that his dissatisfaction with the North PSA job caused him to retire prematurely.

On June 23, 1998, Perodeau filed complaints with the federal Equal Employment Opportunity Commission ("EEOC") and the Connecticut Commission on Human Rights and Opportunities ("CHRO") alleging that the Hartford Police Department had violated his civil rights. Perodeau claims that after he filed the complaints, Blanchette ordered him not to enter the

ESD office and mockingly said in the presence of others, "What are you going to do, call the CHRO?" Perodeau also contends that Blanchette wrongfully accused him of smoking in the ESD photo lab.

STANDARD

A motion for summary judgment may not be granted unless the court determines that there is no genuine issue of material fact to be tried and that the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56©); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). The burden of showing that no genuine factual dispute exists rests on the party seeking summary judgment. See Adickes v. S. H. Kress & Co., 398 U.S. 144, 157 (1970); Cronin v. Aetna Life Ins. Co., 46 F.3d 196, 202 (2d Cir. 1995). After discovery, if the party against whom summary judgment is sought "has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof," then summary judgment is appropriate. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

The substantive law governing a particular case identifies those facts that are material with respect to a motion for summary judgment. See Anderson, 477 U.S. at 258.

A court may grant summary judgment "'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact . . . .'" Miner v. Glen Falls, 999 F.2d 655, 661 (2d Cir. 1993) (citation omitted); see also United States v. Diebold, Inc., 369 U.S. 654, 655 (1962). "A dispute regarding a material fact is genuine 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d 520, 523 (2d Cir. 1992) (quoting Anderson, 477 U.S. at 248).

In considering a Rule 56 motion, "the court's responsibility is not to resolve disputed issues of fact but to assess whether there are any factual issues to be tried, while resolving ambiguities and drawing reasonable inferences against the moving party." Knight v. U.S. Fire Ins. Co., 804 F.2d 9, 11 (2d Cir. 1986) (citing Anderson, 477 U.S. at 248; Eastway Constr. Corp. v. City of New York, 762 F.2d 243, 249 (2d Cir. 1985)). Thus, "[o]nly when reasonable minds could not differ as to the import of the evidence is summary judgment proper." Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir. 1991); see also Suburban Propane v. Proctor Gas, Inc., 953 F.2d 780, 788 (2d Cir. 1992).

DISCUSSION

In this case, Perodeau claims that Defendants violated his right to equal protection and that Blanchette illegally retaliated against him for filing the CHRO complaint.[1] The court finds that Perodeau has failed to submit sufficient evidence to support either claim and that summary judgment on the Defendants' claims is appropriate.

I. Equal Protection Claim Based on "Class of One" Theory

A. Applicable Law

Perodeau claims that he was denied equal protection of the laws as guaranteed by the Fourteenth Amendment. The Equal Protection Clause requires governmental entities to treat all similarly situated people alike. See City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). Although equal protection claims generally involve discrimination

[1] Based on counsel's representations at oral argument and the court's review of the briefs and summary judgment record, the court finds that Perodeau's Title VII discrimination claim has been withdrawn. To the extent Perodeau believes that he still has a Title VII claim that can survive summary judgment, the court finds an utter lack of record evidence that he, among other things, was a member of a protected group, suffered an adverse employment action, and that the adverse employment action occurred under circumstances giving rise to an inference of discrimination. See Spence v. Maryland Cas. Co., 995 F.2d 1147, 1155 (2d Cir. 1993).

against an individual who belongs to a protected class, the guarantee of equal protection may also extend to persons who allege no specific class membership, but are nonetheless subjected to invidious discrimination at the hands of government officials. See, e.g., LeClair v. Saunders, 627 F.2d 606, 608-10 (2d Cir. 1980). The Supreme Court recently affirmed the validity of such claims — commonly referred to as "class of one" claims — in which "the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000) (per curiam). To prevail on such a claim of selective enforcement, plaintiffs are required to show (1) that they were treated differently from other similarly situated individuals; and (2) that the differential treatment was based on "impermissible considerations such as race, religion, intent to inhibit or punish the exercise of constitutional rights, or malicious or bad faith intent to injure a person." LaTrieste Rest. & Cabaret, Inc. v. Village of Port Chester, 40 F.3d 587, 590 (2d Cir. 1994).

B. Analysis

Perodeau has failed to provide evidence supporting his equal protection claim as a "class of one."[2] More specifically, he has failed to show that he was intentionally treated differently from other similarly situated individuals and that he was subjected to such differential treatment for impermissible reasons. The court finds that, as a threshold matter, Perodeau was similarly situated to Cruz, the only other accident reconstructionist in ESD. There is no evidence that Perodeau was required to take more evening call-backs than Cruz. More important, Perodeau does not dispute that he was the sole ESD detective who made himself unavailable for evening call-backs as a matter of general practice.

Further, the record demonstrates that Defendants had rational and legitimate reasons for the decision to transfer Perodeau out of CSU. Although Perodeau claims that Defendants intentionally changed the call-back policy to compel his transfer, the evidence reveals otherwise. First, Perodeau does not dispute that this policy change occurred only after ESD lost important evidence when no ESD detective responded to a call-back in June 1997. Second, he does not challenge

[2] Perodeau is a white male and not a member of a protected class for purposes of equal-protection analysis in this case.

Cherniak's testimony that on October 9, 1997, Perodeau said he would be unavailable for call-backs, even though CSU accident reconstructionists were required to be available. Third, Perodeau does not dispute that between June 15, 1997, and November 10, 1997, he failed to respond to ten call-backs, four of which involved fatal automobile accidents. Thus, the record is simply bereft of evidence that Defendants intentionally manipulated the change in call-back policy to force Perodeau's transfer from ESD.

In sum, the summary judgment record does not support his equal protection claim. There is no evidence that he was intentionally treated differently from other similarly situated individuals or that he was subjected to differential treatment for unconstitutional reasons. The court grants summary judgment to Defendants on Perodeau's equal protection claim as a matter of law.

II. Retaliation Claim

A. Applicable Law

To prevail on a claim of retaliation in the employment context under Title VII, the employee must show that (1) the employee was engaged in protected activity; (2) the employer was aware of that activity; (3) the employee suffered an

adverse employment action; and (4) there was a causal connection between the protected activity and the adverse employment action." Reed v. A.W. Lawrence & Co., 95 F.3d 1170, 1178 (2d Cir. 1996). "[N]ot every unpleasant matter short of [discharge or demotion] creates a cause of action," and a plaintiff suing for Title VII retaliation must demonstrate that he was subjected to a "materially adverse change in the terms and conditions of employment." Richardson v. New York State Dept. of Correctional Serv., 180 F.3d 426, 446 (2d Cir. 1991) (internal quotations and citations omitted).

B. Analysis

Perodeau claims that after filing his EEOC and CHRO complaints, Blanchette retaliated against him by ordering him to not enter the ESD office and by saying in the presence of others, "What are you going to do, call the CHRO?" Perodeau also contends that Blanchette orally accused him of smoking in the ESD photo lab. In essence, Perodeau contends that his filing of the EEOC and CHRO complaints caused Blanchette to subject him to verbal humiliation, which should be considered tantamount to an "adverse employment action."

Under these facts, however, Perodeau falls far short of presenting evidence that would permit his retaliation claim to

survive summary judgment. The court finds as a matter of law that although severe harassment from a co-worker could constitute an "adverse employment action" for purposes of Title VII, see id. at 446, Blanchette's mocking remarks did not come close to rising to that extreme level. Moreover, these insults had no bearing on his position in North PSA, where Perodeau's salary and benefits remained the same as they had been in ESD. See id. (retaliation must subject employee to a "materially adverse change in the terms and conditions of employment"). In fact, at North PSA, he was no longer required to be available for call-back duty. Moreover, Perodeau's subjective feelings about Blanchette's remarks are irrelevant to the court's determination as to whether retaliation occurred. See Torres v. Pisano, 116 F.3d 625, 639-640 (2d Cir. 1997) (defendants' actions, which left plaintiff feeling humiliated, did not result in an adverse employment action). Thus, the court grants Defendants' motion for summary judgment with respect to Perodeau's Title VII retaliation claim.

III. Qualified Immunity

Finally, even assuming that Perodeau had provided evidence to support his equal protection and retaliation

claims, the court finds that the individual Defendants other than Hartford would be entitled to qualified immunity on those claims. Qualified immunity shields governmental actors from liability as long as their conduct does not "'violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Lennon v. Miller, 66 F.3d 416, 420 (2d Cir. 1995) (citation omitted). When "the plaintiff's federal rights and the scope of the official's permissible conduct are clearly established, the qualified immunity defense protects a government actor if it was 'objectively reasonable' for him to believe that his actions were lawful at the time of the challenged act." Id. A right is "clearly established" if its contours are sufficiently clear so that a reasonable official would understand his conduct violated that right. See McCullough v. Wyandanch Union Free Sch. Dist., 187 F.3d 272, 278 (2d Cir. 1999) ("The question is not what a lawyer would learn or intuit from researching case law, but what a reasonable person in the defendant's position should know about the constitutionality of the conduct.").

The summary judgment record reveals that Defendants' conduct did not violate Perodeau's rights to equal protection or to be free from retaliation in the workplace. In

particular, Defendants' transfer of Perodeau due to his refusal to take call-backs regularly did not violate any "clearly established statutory or constitutional rights of which a reasonable person would have known." Lennon, 66 F.3d at 420. Moreover, while Blanchette's statements may have been rude, the court finds that they did not violate Perodeau's rights under Title VII. Consequently, because the individual Defendants' actions were lawful, the court finds that they are entitled to qualified immunity on all claims.

CONCLUSION

For the foregoing reasons, Defendants' Motion for Summary Judgment is GRANTED. The Clerk is instructed to enter judgment in favor of the Defendants and close the file.

SO ORDERED this ___ day of March, 2004, at Bridgeport, Connecticut.

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Alan H. Nevas
United States District Judge